

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Appeal to the Board of Patent Appeals and Interferences

ATTY DOCKET: KCX-699 (19266)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: MARY L. McDANIEL ET AL.

Examiner: Michael Collins

Serial No.: 10/732,925

Group Art Unit: 7367

Filed: December 10, 2003

Our Account No.: 04-1403

Confirmation No.: 7367

Customer No.: 22827

Title: DISPENSER FOR PERSONAL CARE ABSORBENT ARTICLES

Sir:

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated _____ of the Examiner finally rejecting claims ____.
2. ☒ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy)
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
4. ☐ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
5. ☐ "Small entity" verified statement filed: ☐ herewith ☐ previously.
6. **FEE CALCULATION:**

If box 1 above is X'd enter \$500.00

Fees
\$ _____

If box 2 above is X'd enter \$500.00

\$ 500.00

If box 3 above is X'd enter \$1,000.00

\$ _____

If box 4 above is X'd enter -0- (no fee)

\$ _____

Petition is hereby made to extend the original due date of _____
to cover the date of this paper and any enclosure for which the
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(4 months \$1,590), (5 months \$2,160)

Subtotal \$ 500.00

Less any previous extension fee paid since above
original due date.

Subtotal - \$ 500.00

If "small entity" box 5 above is X'd, enter one-half
(1/2 of subtotal and subtract)

TOTAL FEE - \$ 500.00

- ☐ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☒ Charge to credit card
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. show in the heading hereof. This statement does not authorize charge of the issue fee in this case.

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PATENT

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APPLICANTS' APPEAL BRIEF

MAIL STOP APPEAL BRIEF – PATENTS

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.37, Applicants hereby submit the opening appeal brief to the Examiner's Final Action mailed on October 13, 2006, for the caption application.

1. REAL PARTY IN INTEREST:

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of the Applicants' entire right title and interest.

2. RELATED APPEALS AND INTERFERENCES:

None.

3. STATUS OF CLAIMS:

Applicants appeal the rejection of all of the non-allowed pending claims 1-18 and 20-32, which are under final rejection mailed on October 13, 2006.

4. STATUS OF AMENDMENTS:

No amendment has been made after the final rejections mailed on October 13, 2006. A Response to Final Rejection was timely filed responsive to these final rejections. Advisory Action was issued on February 6, 2007.

5. SUMMARY OF CLAIMED SUBJECT MATTER:

Claims 1 and 20 are the only independent claims.

Independent claim 1

As explained at page 4, line 33 through page 5, line 3 and shown in Figs. 1A-1D, 2, 3, 4A and 4B, independent claim 1 is drawn to a portable carrying case 10 for personal care absorbent articles 12. Per page 5, lines 10-12, the case 10 includes a

body 14 that defines an internal enclosure 24 for receipt of a plurality of stacked personal care absorbent articles 12.

As explained at page 5, lines 19-20, and shown in Figs. 1A – 1D, 2, 3, 4A and 4B for example, the body 14 is configured with an exterior surface that is ergonomically shaped to generally conform to being carried and held in one hand of the user while the user's other hand removes an article from the internal enclosure 24.

As explained at page 5, lines 26-30, and shown in Figs. 1B, 2 and 4A for example, an opening 26 is defined in the body 14 at a location so as to expose an upper one of the absorbent articles 12 for dispensing without generally exposing the underlying absorbent articles.

As explained at page 6, lines 4-7, and shown in Figs. 1A, 1B, 1D, 2, 3 and 4A for example, a lid 28 is movably disposed relative to the body 14 from a closed position (Figs. 1A and 4B) wherein the opening 26 is covered by the lid 28 to an open position (Figs. 1B, 1D and 4A) wherein access is provided to the absorbent articles 12 through the opening 26.

As explained at page 6, line 31 through 7, line 3, and shown in Figs. 1C and 4B for example, a manual push structure 30 is defined in the body 14 generally opposite from the opening 26, and the push structure 30 is configured to allow a user to push on the bottommost one of the stacked absorbent articles 12 so as to move the uppermost one of the stack of absorbent articles 12 toward the opening 26 for grasping and retrieval by the user.

Independent claim 20

As explained at page 4, line 33 through page 5, line 3 and shown in Figs. 1A-1D, 2, 3, 4A and 4B, independent claim 20 is drawn to a portable carrying case 10 for personal care absorbent articles 12. As shown in Figs. 1A, 1B, 1C, 1D, 2, 3, 4A and 4B, and described at page 5, lines 22-24, the case 10 comprises an elongated body 14 that can have a front wall 16, a back wall 18 and sidewalls 20. Per page 5, lines 10-12, and as shown in Figs. 1B, 1D, 2, 3, 4A and 4B for example, the body 14 defines an internal enclosure 24 within the walls. As explained at page 5, lines 19-20, and shown in Figs. 1A – 1D, 2, 3, 4A and 4B for example, the body 14 is configured with an exterior surface that is ergonometically shaped to generally conform to being carried and held in one hand of the user while the user's other hand removes an article from the internal enclosure 24.

As described at page 5, lines 10 – 14, and shown in Figs. 1B, 1D, 2, 3, 4A and 4B for example, a stack of personal care absorbent articles 12 is carried in the enclosure 24.

As explained at page 5, lines 26-30, and shown in Figs. 1B, 2 and 4A for example, an opening 26 is defined in at least a portion of the front wall 16 of the body 14 so as to expose an upper one of the absorbent articles 12 for dispensing through the opening 26 without generally exposing underlying absorbent articles 12.

As explained at page 5, line 32 through page 6, line 3, and shown in Figs. 1A, 1C, 1D, 2, 3, 4A and 4B for example, the side walls 20 define a closed perimeter 32 around the opening 26 such that the absorbent articles 12 are prevented from being slid out of the enclosure 24.

As explained at page 6, lines 4-7, and shown in Figs. 1A, 1B, 1D, 2, 3 and 4A for example, a lid 28 is movably disposed relative to the body 14 from a closed position (Figs. 1A and 4B) wherein the opening 26 is covered by the lid 28 to an open position (Figs. 1B, 1D and 4A) wherein access is provided to the absorbent articles 12 through the opening 26.

As explained at page 7, lines 6, 7, 10 and 11, and shown in Figs. 1C and 4B, a manual push structure 30 can be defined in the back wall 18. As explained at page 6, line 31 through 7, line 3, and shown in Figs. 1C and 4B for example, a manual push structure 30 is defined in the body 14 generally opposite from the opening 26, and the push structure 30 is configured to allow a user to push on the bottommost one of the stacked absorbent articles 12 so as to move the uppermost one of the stack of absorbent articles 12 toward the opening 26 for grasping and retrieval by the user. As shown in Figs. 1C and 4B and at page 3, lines 20 – 22, page 6, lines 1 – 3 and 32 and page 7, lines 1 – 2 of applicants' specification, when the user pushes on the bottommost one of the stacked absorbent articles 12, the uppermost one of the articles 12 is moved toward the opening 26 for grasping and retrieval by the user in a direction generally transverse to the plane of the front wall 16.

As shown in Figs. 1A, 1B, 1D, 3 and 4A for example, a biasing structure 54, 54a, 54b can be configured with the body 14 and disposed to bias the stack of absorbent articles 12 toward the back wall 18.

6. GROUND OF REJECTION TO BE REVIEWED ON APPEAL:

The final rejections of claims 1-18 and 20-32 as allegedly based on a disclosure which is not enabling under 35 U.S.C. § 112, first paragraph.

The final rejections of claims 1-18 and 20-32 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention under 35 U.S.C. § 112, second paragraph.

The final rejections of claims 1-5, 7, 8, 11-13, 16-18 and 32 as being anticipated by Borrero (USP 6,799,695) under 35 U.S.C. § 102(e).

The final rejection of claim 6 as being unpatentable over Borrero (USP 6,799,695) in view of Yamada (USP 5,704,471) under 35 U.S.C. § 103(a).

The final rejection of claim 9 as being unpatentable over Borrero (USP 6,799,695) in view of Pehr (USP 6,349,849) under 35 U.S.C. § 103(a).

The final rejection of claim 10 as being unpatentable over Borrero (USP 6,799,695) in view of Pehr (USP 6,349,849) and Admundson et al (USP 6,604,651) under 35 U.S.C. § 103(a).

The final rejections of claims 14, 15, 20, 21, 23, 24 and 27-30 as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716) under 35 U.S.C. § 103(a).

The final rejection of claim 22 as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716) and Yamada (USP 5,704,471) under 35 U.S.C. § 103(a).

The final rejection of claim 25 as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716) and Pehr (USP 6,349,849) under 35 U.S.C. § 103(a).

The final rejection of claim 26 as being unpatentable over Borrero (USP 6,799,695) in view of Peebles (USP 3,343,716) and Pehr (USP 6,349,849) and further in view of Amundson et al under 35 U.S.C. § 103(a).

The final rejection of claim 31 as being unpatentable over Peebles (USP 3,343,716) in view of Borrero (USP 6,799,695) under 35 U.S.C. § 103(a).

7. ARGUMENT:

In the Response to Arguments section on page 2 of the Final Action, the In re Lindberg decision is cited for the proposition that: “Providing portability to a prior art device is a design consideration within the skill of the art.” However, attributing such a broad holding to the Lindberg decision is unwarranted. For what the Lindberg decision actually said was that (emphasis added):

it is not regarded as inventive to merely make an old device portable or movable without producing any new and **unexpected result**.

93 USPQ at 26. The “unexpected result” line of reasoning in the Lindberg decision rendered in 1952 was rebuked by the Supreme Court’s 1966 decision in Graham v. John Deere, 383 U.S. 1 (1966), which may explain why Lindberg never has been cited in any published Federal Circuit opinion and why Lindberg never again was cited by the CCPA for this proposition after 1956. Even the Board of Appeals stopped citing Lindberg for this “unexpected result” line of reasoning after 1959. In fact, the Lindberg

decision never has been cited for any proposition in any published opinion since 1964.

Moreover, lines 5-8 of paragraph 1 on page 2 of the Final Action assert that:

a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim.

However, this assertion does not apply to applicants' claims. For applicants' claims require a particular configuration. Moreover, that configuration clearly is not present in the prior art being cited against applicants' claims.

Page 3, lines 19-21 of the Final Office Action contends that:

simply that there are differences between the two references is insufficient to establish that such references "teach away" from any combination thereof. In re Beattie, 974 F.2d 1309, 1312-13, 24 U.S.P.Q. 2d 1040, 1042 (Fed. Cir. 1992).

However, Applicants' response pointed out why the differences in the references would make it unlikely that persons of ordinary skill would selectively extract certain features from the references in combination with other isolated features of the references. The differences were raised in order to highlight the fact that the Office Action was being selective in choosing features from each reference and combining them in a way that only was suggested by applicants' disclosure. The Final Office Action has not explained why persons of ordinary skill would selectively extract certain features from the references in combination with other features of the references, when those references contain teachings that work at cross-purposes from each other.

A. Claims 1-18 and 20-32 are enabled under 35 U.S.C. § 112, first paragraph

In rejecting claims 1-32, the Final Office Action states in paragraph 3 on page 4 thereof that (emphasis in original):

Claims 1-32 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The applicant discloses, "said body configured with an exterior surface that is **ergonomically shaped to generally conform** to being carried and held in one hand of the user" which seems to be some type of size range critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 U.S.P.Q. 356 (CCPA 1976). This size range is not disclosed within the specification.

Thus, the Final Rejection cites *In re Mayhew* for the proposition that failing to disclose a size range renders the claims not enabled by the disclosure.

However, the *In re Mayhew* decision does not stand for the proposition asserted in the Final Action. The opinion of the court states the matter succinctly in the following two sentences (emphasis added):

The board further affirmed the examiner's rejection of certain claims, which we have designated (3), **because they fail to recite the temperature of the zone** of cooled spelter or the function thereof. **We will not sustain this rejection**, which is the only rejection of this particular group of claims.

188 U.S.P.Q at 358. The court did not fault the claims for failing to specify a range of temperatures for the zone of the cooled spelter.

Enablement under Section 112, first paragraph, is approached from the perspective of the person of ordinary skill. *Ajinomoto Co. v. Archer-Daniels-Midland Co.*, 228 F.3d 1338, 56 U.S.P.Q. 2d 1332, 1337 (Fed. Cir. 2000). Accordingly, the patentee is not required to include in the specification information readily understood by practitioners, lest every patent be required to be written as a comprehensive tutorial and

treatise for the generalist, instead of a concise statement for persons in the field. See Hybritech, Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1384, 231 U.S.P.Q. 81, 94 (Fed. Cir. 1986) (“a patent need not teach, and preferably omits, what is well known in the art.”).

Numerous decisions applicable to the present case have been developed in the case law to guide the application of the enablement requirements of Section 112, first paragraph. For example, it has long been held that:

If an invention pertains to an art where the results are predictable, e.g., mechanical as opposed to chemical arts, a broad claim can be enabled by disclosure of a single embodiment, In Re: Cook, 439 F.2d 730, 735, 169 U.S.P.Q. 298, 301 [CCPA 1971]; In Re: Vickers, 141 F.2d 522, 527 61 U.S.P.Q. 122, 127 [CCPA 1944] and is not invalid for lack of enablement simply because it reads on another embodiment of the invention which is inadequately disclosed, see Gould v. Mossinghoff, 711 F.2d 396, 400 219 U.S.P.Q. 393, 396 [D.C. Cir. 1983].

Spectra-Physics v. Coherent, 827 F.2d 1524 3 U.S.P.Q. 1737, 1743 (Fed. Cir. 1987), cert. denied, 44 U.S. 954 (1987). Moreover, open ended claims are not inherently improper and may be supported if there is an inherent, albeit not precisely known, upper limit and the specification enables one of skill in the art to approach that limit. Scripps Clinic & Research Foundation v. Genentech, Inc., 927 F.2d 1565, 18 U.S.P.Q. 2d 1001, 1006 (Fed. Cir. 1991). And the question of undue experimentation is a matter of degree, and so the Patent and Trademark Office Board of Appeals thus stated:

The test is not merely quantitative, since a considerable amount of experimentation is permissible, if it is merely routine, or if the specification in question provides a reasonable amount of guidance with respect to the direction in which the experimentation should proceed to enable the determination of how to practice a desired embodiment of the invention claimed.

Ex Parte Jackson, 217 U.S.P.Q. 804, 807 (1982).

In the present case, the full wording of the claim language partially quoted in the Final Action is as follows:

said body configured with an exterior surface that is ergonomically shaped to generally conform to being carried and held in one hand of the user while the user's other hand removes an article from the internal enclosure

At page 1, lines 5 – 7 and 23 – 25 for example, applicants' specification explains that the absorbent articles are personal care products like feminine care products, like sanitary napkins, pantliners, tampons and interlabial devices, which tells the person of ordinary skill that the targeted consumer is the vast majority of the adult female population. So it cannot be denied that the person of ordinary skill brings these facts to the table when considering what it takes to make and use applicants' invention. Thus, in the present case, it becomes self-evident that the range of hand sizes to be served is well within the knowledge of the person of ordinary skill. As to such range of hand sizes it readily can be said that "there is an inherent, albeit not precisely known, upper limit and the specification enables one of skill in the art to approach that limit." Scripps, supra. Moreover, applicants' disclosure equally well informs the person of ordinary skill that targeting any niche of the population is also possible by conforming the size of the case accordingly. Indeed, applicants' disclosure enables the person of ordinary skill to serve even the dwarf population with embodiments of applicants' invention.

As to informing the person of ordinary skill how to make and use "said body configured with an exterior surface that is **ergonomically shaped to generally conform** to being carried and held in one hand of the user," it is said that a picture is

worth a thousand words. Indeed, under proper circumstances, drawings alone may provide a written description of an invention as required by Section 112, Vas-Cath, Inc. v. Mahurkar, 935 F.2d 1555, 19 U.S.P.Q. 2d 1111, 1117 (Fed. Cir. 1991).

Per page 4, lines 6 – 23 of applicants' specification, embodiments of the claimed device are illustrated in Figs. 1A, 1B, 1C, 1D, 2, 3, 4A, 4B. See also support for the claimed feature at issue at page 5, lines 19 – 20, 25 – 25, and page 8, lines 10 - 13. Moreover, users are female human beings. Respectfully, knowledge of the range of sizes of female human hands is within the level of ordinary skill. In view of the foregoing, the reference to "generally conform to being carried in one hand of the user * * * " suffices to enable the person of ordinary skill to practice the claimed invention. For in the present case, "the specification in question provides a reasonable amount of guidance with respect to the direction in which the experimentation should proceed to enable the determination of how to practice a desired embodiment of the invention claimed." Ex parte Jackson, *supra*.

For the reasons explained above, applicants respectfully submit that claims 1-18 and 20-32 are enabled in accordance with 35 U.S.C. 112, first paragraph.

B. Claims 1-18, 20-32 are patentable under 35 U.S.C. 112, second paragraph

Claims 1-32 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Paragraph 5 on page 4 of the Final Action questioned "what is an ergonomically shaped exterior surface" and what does "generally conform" mean? In the Advisory Action mailed on February 6, 2007, the Examiner maintained the final rejection of the claims based on indefiniteness in the following terms:

The use of the phrase “ergonomically shaped to generally conform” is subjective. It renders the claim indefinite because hand sizes vary greatly between human beings. The hand of a dwarf or little person and the hand of a six foot man vary greatly in size and consequently the ergonomics also vary greatly. What is “safe and efficient” for one person may not be safe and efficient for the next. It appears by the use of the subjective term “ergonomically shaped to generally conform” applicant is attempting to claim dimensions without actually doing so. The use of the subjective terminology leaves the claim indefinite as to the metes and bounds of the claimed device. Therefore, the claim is unclear due to the subjectivity of the phrase “ergonomically shaped to generally conform” because the phrase intends to define the body of the product by indirectly claiming the hand of the user.

Claims are not invalid for failing to comply with the requirements of the second paragraph of 35 U.S.C. § 112, provided the claims reasonably apprise those skilled in the art both of the utilization and scope of the invention, and the language is as precise as the subject matter permits. PPG Industries, Inc. v. Guardian Industries Corp., 75 F.3d 1558, 37 U.S.P.Q. 2d 1618, 1622 (Fed. Cir. 1996). To illustrate this principle, the opinion in Verve, LLC v. Crane Cams, Inc., 65 U.S.P.Q. 2d 1051, 1054 (Fed. Cir. 2002) gave the following example:

The question is not whether the word “substantially” has a fixed meaning as applied to “constant wall thickness,” but how the phrase would be understood by persons experienced in this field of mechanics, upon reading the patent documents.

Applying this principle to applicants’ language, while “[t]he hand of a dwarf or little person and the hand of a six foot man vary greatly in size and consequently the ergonomics also vary greatly,” such variance is not outside the understanding of the person of ordinary skill. Accordingly, applicants’ claim language is not indefinite under the second paragraph of 35 U.S.C. § 112.

The Verve opinion further explained that when terms are understood in the context of a person of ordinary skill, they may describe the invention with precision appropriate to the technology and without intruding on the prior art:

Expressions such as “substantially” are used in patent documents when warranted by the nature of the invention, in order to accommodate the minor variations that may be appropriate to secure the invention. Such usage may well satisfy the charge to “particularly point out and distinctly claim” the invention, 35 USC § 112, and indeed may be necessary in order to provide the inventor with the benefit of his invention. In Andrew Corp. v. Gabriel Electronics, Inc., 847 F.2d 819, 821-22, 6 U.S.P.Q. 2d 210, 213 (Fed. Cir. 1988) the court explained that usages such as “substantially equal” and “closely approximate” may serve to describe the invention with precision appropriate to the technology and without intruding on the prior art. The court again explained in Ecolab, Inc. v. Environchem, Inc., 264 F.3d 1358, 1367, 60 U.S.P.Q. 2d 1173, 1179 (Fed. Cir. 2001) that “like the term ‘about,’ the term ‘substantially’ is a descriptive term commonly used in patent claims to ‘avoid a strict numerical boundary to the specified parameter,’” quoting Paul Corp. v. Micron Separations, Inc., 66 F.3d 1211, 1217, 36 U.S.P.Q. 2d 1225, 1229 (Fed. Cir. 1995). It is well established that when the term “substantially” serves reasonably to describe the subject matter so that its scope would be understood by persons in the field of the invention, and to distinguish the claimed subject matter from the prior art, it is not indefinite.

65 U.S.P.Q. at 1054.

In the present case, the dictionary defines ergonomically as “designed and arranged to interact with people most efficiently and safely.” Hence, applicants’ portable carrying case that has a body that has “an exterior surface that is ergonomically shaped” means that the exterior surface of the body is designed and arranged to interact with people most efficiently and safely. As noted above, applicants gave additional meaning to these phrases by virtue of the embodiments illustrated in Figs. 1A, 1B, 1C, 1D, 2, 3, 4A, 4B and the descriptions at page 4, lines 6–23, page 5, lines

19–20, 25–25, and page 8, lines 10-13. Additionally, from the shapes disclosed in applicants' drawings and the knowledge of the workings of one's own hand, the person of ordinary skill can discern readily what is meant by "generally conform," and such terminology is warranted by the circumstances of applicants' invention and need not be further defined due to any constraint of the prior art. Moreover, as regards the Advisory Action's concern with "safe and efficient," applicants submit that the contrast between applicants' embodiments and the sharp-edged and pointy-cornered prior art Borrero embodiments is sufficiently wide "to distinguish the claimed subject matter from the prior art." Thus, applicants respectfully submit that the use of the phrases "ergonomically shaped exterior surface" and "generally conform" do not render applicants' claims indefinite.

For the reasons explained above, applicants respectfully submit that claims 1-18 and 20-32 are patentable under 35 U.S.C. 112, second paragraph.

C. Claims 1-5, 7, 8, 11-13, 16-18, 32 are patentable under 35 U.S.C. 102(e) over Borrero.

Lines 1 - 2 of paragraph 6 on page 5 of the Final Office Action state:

Regarding claim 1, Borrero discloses a portable carrying case for personal care absorbent articles,

However, this statement inaccurately describes what is disclosed in Borrero and ignores the express disclosure of Borrero. As the following passages from Borrero make clear, the Borrero dispensing device is not intended or configured to be a portable carrying case. Column 1, lines 19 - 21 of Borrero states (emphasis added):

It is further desirable to provide a sanitary napkin dispensing device that may be selectively **mounted to a wall or surface of choice**.

Column 1, lines 29 - 31 of Borrero states (emphasis added):

Another object of the present invention is to provide a sanitary napkin dispensing device that may be selectively **mounted to a convenient location** of

Column 1, lines 58 - 60 of Borrero states (emphasis added):

The main housing element is further **furnished with wall mounting brackets** located at the top most ends of the sides of the sanitary napkin dispensing device.

Column 2, lines 33 - 35 of Borrero states (emphasis added):

An individual having a sanitary napkin dispensing device selectively **attached to a wall or other convenient location** may access and remove a sanitary napkin for use.

Column 3, lines 29 - 31 of Borrero states (emphasis added):

Also shown is the sanitary napkin dispensing device selectively **mounted waist high on one of the walls** that comprise the private vicinity.

Column 4, lines 56 - 58 of Borrero states (emphasis added):

The device 10 is shown in FIG. 1. As shown in FIGS. 1-9, the device 10 encloses sanitary napkins 12, supports a disposal bag 14, and can be **mounted on a wall** 16.

Column 5, line 60 – column 6, line 5 of Borrero states (emphasis added):

As shown in FIG. 1, it is often desirable to **mount the device 10 on a wall** 16. Mounting brackets 54 are provided for this purpose, and are attached to the housing left side 24 and right side 26. In other embodiments (not shown), other attachment means are provided such as housing rear side 30 slots, housing rear side screw holes, and the like, all in accordance with the present invention, and as determined by the intended end use for the overall device, as will occur to those of skill in the art upon review of the present disclosure.

Column 6, lines 6 - 9 of Borrero states (emphasis added):

In another embodiment, such as shown in FIG. 10, the hooks 54 are not present, or do not extend below the housing bottom side 28, **allowing the bottom side to serve as a base for a freestanding utilization of the device 10.**

Thus, contrary to the above-quoted assertion of the Final Action, as shown in Borrero's FIG 1, the Borrero dispensing device 10 is intended and configured to be mounted or attached to a wall or on a flat surface such as a table or a shelf. The dispensing device as expressly disclosed in the Section 102(b) Borrero reference is therefore a fixture, not a portable carrying case. In contrast to the device 10 of Borrero, the case described in each of independent claims 1 and 20 is a "portable carrying case."

Claims 1 and 20 require a carrying case that has a "body configured with an exterior surface that is ergonomically shaped to generally conform to being carried and held in one hand of the user while the user's other hand removes an article from the internal enclosure." The Borrero device 10 is not configured with an exterior surface that is ergonomically shaped to generally conform to being to be carried and held in one hand of the user while the user's other hand removes an article from the internal enclosure of the device. Instead of being configured to be carried and held in one hand of the user, the Borrero device 10 is configured to be carried by a wall or by a shelf or table.

Lines 12 – 14 of paragraph 1 on page 2 of the Final Action state:

The applicant should consider the hook (52) disclosed by Borrero. The hook could easily enable a user to hold the device in one hand while the user's other hand removes an article from the device.

Applicants respectfully submit that one need only inspect FIG 2 of Borrero to conclude that trying to hold the Borrero device 10 with one hand by that hook 52 while removing an article with the other hand would not be anything close to being easy. Moreover, the awkwardness of such an encounter with the Borrero device 10 is perhaps one reason why Borrero never once suggests attempting such a maneuver with its device 10.

Claims 1 and 20 require Applicants' portable carrying case to include a body that has "an exterior surface that is ergonomically shaped." The exterior surface of the Borrero device 10 has numerous flat surfaces, sharp edges and pointed corners that inherently fail to interact with people most efficiently and safely. Instead, the exterior surface of the Borrero device 10 is configured to interact with a wall or a shelf or a table. Accordingly, unlike Applicants' portable carrying case, the Borrero device 10 lacks a body that has "an exterior surface that is ergonomically shaped."

Claims 1 and 20 require Applicants' portable carrying case to include "a manual push structure defined in said body generally opposite from said opening." Referring to Borrero FIG 6, one can observe that the Borrero opening 48 is defined generally opposite Borrero rear wall 30. Lines 1 – 5 of the last bullet point of paragraph 6 on pages 5-6 of the Final Office Action state that Borrero discloses:

a manual push structure (32 and 42) defined in said body generally opposite from said opening (48), said push structure (32 and 42) configured to allow a user to push on the bottommost one of said stacked absorbent articles (12) so as to move the uppermost one of said stack of absorbent articles (12) towards said opening (48) for grasping retrieval by the user.

However, the foregoing statement inaccurately describes what is disclosed in Borrero and ignores the express disclosure of Borrero. The Final Action designates the

manual push structure as Borrero elements 32 and 42. Accordingly, neither the Borrero top lid 32 nor the Borrero spring 42 can be said to be “defined in” Borrero’s rear wall 30, which is opposite from said opening 48. This impossibility becomes apparent from a viewing of Borrero FIG 7, which is the drawing that appears on the front page of the Borrero patent. Borrero top lid 32 is connected to Borrero back wall 30 by a hinge 34, but Borrero top lid 32 is not “defined in” Borrero’s rear wall 30, as required by claim 20 for example. Thus, Borrero fails to disclose a manual push structure (32 and 42) defined in said body in the appropriate relationship to the opening.

Applicants therefore respectfully submit that claims 1-5, 7, 8, 11-13, 16-18 and 32, as presented herein, are patentable under 35 U.S.C. § 102(e) over Borrero.

D. Claim 2 is patentable under 35 U.S.C. 102(e) over Borrero

Lines 3 – 8 on page 6 of the Final Office Action state (emphasis added):

Regarding claim 2, Borrero discloses an absorbent article carrying case as in claim 1, and further discloses a body comprising a multi-sided structure (10) including a first wall and a second wall disposed opposite said first wall, said opening (48) defined in said first wall (22) and **said push structure (32 and 42) defined in said second wall (30) [the push structure defined in the second wall may be positioned to be opposite the first wall].**

However, as noted already above, Borrero fails to disclose a manual “push structure (32 and 42) defined in said second wall (30).”

In the square-bracketed portion quoted above, the Final Action asserts that “the push structure [32 and 42] defined in the second wall [30] may be positioned to be opposite the first wall [22].” However, such a statement is false. To so position the push structure [32 and 42] would prevent such push structure [32 and 42] from

satisfying the remaining requirements of claims 1 and 20 imposed on the push structure [32 and 42]. For claims 1 and 20 require such push structure [32 and 42] to be “configured to allow a user to push on the bottommost one of said stacked absorbent articles so as to move the uppermost one of said stack of absorbent articles towards said opening for grasping and retrieval by the user.”

Applicants therefore respectfully submit that claim 2 is patentable under 35 U.S.C. § 102(e) over Borrero.

E. Claims 3 and 4 are patentable under 35 U.S.C. 102(e) over Borrero

Similarly, as to claims 3 and 4, Borrero fails to disclose any push structure in Borrero’s back wall 30.

Line 12 on page 3 of the Final Action states:

The lid itself is part of the back wall.

However, applicants respectfully submit that the Final Action cannot have it two ways.

Either the lid is the top wall or it is the back wall, but it cannot be both and still be part of the “multi-sided structure compris[ing] a front wall, a back wall . . . so as to define an elongated box-like structure” as required by claim 3.

Applicants therefore respectfully submit that claims 3 and 4 are patentable under 35 U.S.C. § 102(e) over Borrero.

F. Claim 8 is patentable under 35 U.S.C. 102(e) over Borrero

Claim 8 requires an “access opening having a restricted size so as to prevent removal of said bottommost article through said access opening.” As to claim 8, page

3, lines 15-16 of the final Office Action contends that:

When the lid is closed the opening is restricted and prevents removal of said bottommost article through said access opening.

However, claim 8 calls for the size of the opening to be restricted, not obstructed or closed. Restricted is different from having the opening closed wherein there is no opening.

As to claim 8, Borrero fails to disclose an access opening having a restricted size so as to prevent removal of said bottommost article through said access opening. When the Borrero lid 32 is opened, that opening is where the articles are loaded into the housing, and thus that opening fails to prevent removal of the bottommost article through the access opening. For the Final Action to take the position that the closed lid satisfies the claim 8 limitation of "said access opening having a restricted size so as to prevent removal of said bottommost article through said access opening" is a position at odds with the plain meaning of the words to the person of ordinary skill. If the lid is closed, a closed lid does not restrict the size of the opening. There must be an opening for the opening to have size. A closed lid eliminates the opening. Opening and closing the lid does not affect the size of the opening. Opening and closing the lid affects the user's access to the opening, whatever the opening's size.

Moreover, the Final Action's citation of Borrero in this manner necessitates turning the ordinary notions of upper and lower on their head. To the person of ordinary skill, and to human beings in general, notions of uppermost and bottommost are tied to the direction of the force of gravity. The Borrero opening 48 is intended in use to be lower than the Borrero top lid 32.

Applicants therefore respectfully submit that claim 8 is patentable under 35 U.S.C. § 102(e) over Borrero.

G. Claim 6 is patentable over Borrero in view of Yamada under 35 U.S.C. 103(a)

Yamada fails to correct the deficiencies noted above in Borrero. Accordingly, claim 6 is patentable under 35 U.S.C. 103(a) over Borrero in view of Yamada for at least this first reason.

Moreover, Borrero and Yamada fail to provide any motivation to substitute Yamada's slidable lid for Borrero's pivoting lid 46. The motivation asserted by the Final Action is "for the purpose of covering and uncovering the tissue dispensing opening." However, Borrero's pivoting lid 46 already satisfies the alleged motivation "of covering and uncovering the tissue dispensing opening." Therefore, the only motivation is Applicants' disclosure.

Applicants therefore respectfully submit that claim 6 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Yamada.

H. Claim 9 is patentable over Borrero in view of Pehr under 35 U.S.C. 103(a)

Pehr fails to correct the deficiencies noted above in Borrero. Accordingly, claim 9 is patentable under 35 U.S.C. 103(a) over Borrero in view of Pehr for at least this reason. Applicants therefore respectfully submit that claim 9 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Pehr.

I. Claim 10 is patentable over Borrero in view of Pehr and Amundson et al under 35 U.S.C. 103(a)

Amundson et al discloses a reclosable plastic bag and fails to correct the deficiencies noted above in Borrero. Accordingly, claim 10 is patentable under 35 U.S.C. 103(a) over Borrero in view of Pehr and further in view of Amundson et al for at least this first reason.

Moreover, Borrero, Pehr and Amundson et al fail to provide any motivation to substitute Amundson et al's translucent elastic material for Pehr's elastic material. The offered motivation of providing an indication of the quantity of wipes remaining in the package is superfluous in view of the explanation provided on page 7, lines 12 - 14 of the Final Office Action. There the Final Office Action already contends that Borrero's viewing window (32 and 34) allows the user to ascertain the contents of the body 10 without opening the lid. Thus, the only motivation to substitute Amundson et al's translucent elastic material for Pehr's elastic material is Applicants' disclosure.

Applicants therefore respectfully submit that claim 10 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Pehr and further in view of Amundson et al.

J. Claims 14, 15, 20, 21, 23, 24 and 27-30 are patentable under 35 U.S.C. 103(a) over Borrero in view of Peebles.

Peebles fails to correct the deficiencies noted above in Borrero. Accordingly, claims 14, 15, 20, 21, 23, 24 and 27-30 are patentable under 35 U.S.C. 103(a) over Borrero in view of Peebles for at least this reason.

K. Claims 14-15 are patentable under 35 USC 103(a) over Borrero in view of Peebles.

Each of claims 14 and 15 requires “a biasing structure configured with said body and disposed to bias said stacked absorbent articles generally away from said opening and towards said push structure.” Admitting that Borrero lacks such a structure, the Final Action contends that:

Peebles discloses a biasing structure (21) configured with said body and disposed to bias said stacked absorbent articles generally away from said opening and towards said push structure for the purpose of preventing the entire box from rising (see column 2 lines 67-72). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant’s invention to modify Borrero by including a biasing structure configured with said body to bias said stacked absorbent articles generally away from said opening and towards said push structure, as disclosed by Peebles, for the purpose of preventing the entire box from rising.

Thus, the Final Action contends that the person of ordinary skill would introduce the Peebles biasing structure (21) to bias the Borrero stacked absorbent articles (12) away from the Borrero opening (48) and towards the Borrero push structure (32 and 42). However, such a Peebles biasing structure (21) of necessity acts in direct opposition to Borrero’s manual push structure of lid 32 and spring 42. For Borrero’s manual push structure (lid 32 and spring 42) pushes toward the opening while the Peebles biasing structure (top cover 21) pushes away from the opening and towards the push structure. Accordingly, the person of ordinary skill would view this arrangement as rendering the Borrero device inoperative.

Moreover, upon reviewing the Peebles biasing structure (21) shown in Peebles FIG 5A and the Borrero stacked absorbent articles (12) in relation to the Borrero opening (48) and push structure (32, 42) shown in Borrero’s FIG 7, it becomes self-

evident that the Final Action's conclusion lacks credibility. Peebles top cover 21 faces against the planar surface of the tissues. But it is the edges of the Borrero stacked absorbent articles (12) that face the Borrero opening (48). The Borrero push structure (32, 42) pushes the Borrero stacked absorbent articles (12) in a direction that is at a right angle to the plane of the Borrero opening (48). Yet the Peebles teaching regarding its top cover 21 is that it only biases in one orthogonal direction, not two directions at right angles to each other as would be required to satisfy the claim 14 requirement of biasing said Borrero stacked absorbent articles (12) generally away from said Borrero opening (48) and towards said Borrero push structure (32, 42). Thus, the Peebles teaching regarding its top cover 21 fails to apply to the way that the Borrero stacked absorbent articles (12) are disposed relative to the Borrero opening (48) and said Borrero push structure (32, 42). Plainly, to attempt to do as the Final Action proposes is physically impossible, and thus the person of ordinary skill could not do so.

Applicants therefore respectfully submit that claims 14 and 15 are patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles for at least these additional reasons.

L. Claim 15 is patentable under 35 USC 103(a) over Borrero in view of Peebles.

As to claim 15, Borrero's detent 36 and 40 fails to constitute a biasing structure configured with the body to bias the stacked absorbent articles 12 generally away from the opening 48 and towards the push structure 32 and 42. Applicants therefore respectfully submit that claim 15 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles for at least this additional reason.

M. Claims 20, 21, 23, 24 and 27-30 are patentable under 35 USC 103(a) over Borrero in view of Peebles.

As to claim 20, and claims 21, 23, 24 and 27-30 dependent thereon, the Peebles top cover 21 fails to constitute a biasing structure configured with the body and disposed to bias the stack of absorbent articles 12 towards Borrero's back wall 30.

In the third bullet point on page 12 of the Final Office Action, it is contended that Borrero discloses:

a manual push structure (32 and 42) defined in said back wall (30) and configured to allow a user to push on the bottommost one of said stacked absorbent articles (12) so as to move the uppermost one of said stacked absorbent articles (12) towards said opening (48) for grasping and retrieval by the user in a direction generally transverse to a plane of said front wall (22)

However, taking the Final Action's designation of the manual push structure as Borrero elements 32 and 42, then this statement inaccurately describes what is disclosed by Borrero. As already explained above, under no reasonable interpretation can the Borrero top lid 32 or the Borrero spring 42 be said to be "defined in said back wall (30)."

Per Borrero FIG 7, Borrero top lid 32 is connected to Borrero back wall 30 by a hinge 34, and Borrero spring 42 is connected to Borrero top lid 32.

Moreover, each of claims 20, 21, 23, 24 and 27-30 requires "a biasing structure configured with said body and disposed to bias said stack of absorbent articles towards said back wall." As is apparent in Borrero's FIG 7, Borrero lacks any sort of biasing structure configured with said body and disposed to bias said stack of absorbent articles (12) towards said back wall (30).

The Final Action contends at page 12, lines 13-20 that:

Peebles discloses a biasing structure (21) configured with said body and disposed to bias said stack of absorbent articles towards said back wall for the purpose of preventing the entire box from rising (see column 2 lines 67-72). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Borrero by including a biasing structure configured with said body and disposed to bias said stack of absorbent articles towards said back wall, as disclosed by Peebles, for the purpose of preventing the entire box from rising.

Thus, the Final Action contends that the person of ordinary skill would introduce the Peebles biasing structure (21) to bias the Borrero stacked absorbent articles (12) towards the Borrero back wall (30). However, upon reviewing the Peebles biasing structure (21) shown in Peebles FIG 5A and the Borrero stacked absorbent articles (12) and the Borrero back wall (30) shown in Borrero's FIG 7, it becomes self-evident that the Final Action's conclusion lacks credibility. Peebles top cover 21 faces against the planar surface of the tissues. But it is the edges of the Borrero stacked absorbent articles (12) that face the Borrero back wall (30). The planar surfaces of the Borrero stacked absorbent articles (12) do not face the Borrero back wall (30). Thus, the Peebles teaching regarding its top cover 21 fails to apply to the way that the Borrero stacked absorbent articles (12) are disposed relative to the Borrero back wall (30). Plainly, to attempt to do so would damage the Borrero stacked absorbent articles (12), and thus the person of ordinary skill would not do so.

Applicants therefore respectfully submit that claims 20, 21, 23, 24 and 27-30 are patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles.

N. Claim 24 is patentable under 35 USC 103(a) over Borrero in view of Peebles.

Claim 24 requires an "access opening having a restricted size so as to prevent

removal of said bottommost article through said access opening.” As to claim 24, page 13, lines 4-7 of the final Office Action contends that:

Regarding claim 24, Borrero discloses the absorbent article carrying case as in claim 20, wherein said push structure comprises an access opening defined through said back wall, said access opening having a restricted size so as to prevent removal of said bottommost article through said access opening.

However, claim 24 calls for the size of the opening to be restricted, not obstructed or closed. Restricted is different from having the opening closed wherein there is no opening.

As to claim 24, Borrero fails to disclose an access opening having a restricted size so as to prevent removal of said bottommost article through said access opening. When the Borrero lid 32 is opened, that opening is where the articles are loaded into the housing and thus that opening fails to prevent removal of the bottommost article through the access opening. For the Final Action to take the position that the closed lid satisfies the claim 24 limitation of “said access opening having a restricted size so as to prevent removal of said bottommost article through said access opening” is a position at odds with the plain meaning of the words to the person of ordinary skill. If the lid is closed, a closed lid does not restrict the size of the opening. There must be an opening for the opening to have size. A closed lid eliminates the opening. Opening and closing the lid does not affect the size of the opening. Opening and closing the lid affects the user’s access to the opening, whatever the opening’s size.

Moreover, the Final Action’s citation of Borrero in this manner necessitates turning the ordinary notions of upper and lower on their head. To the person of ordinary skill, and to human beings in general, notions of uppermost and bottommost are tied to

the direction of the force of gravity. The Borrero opening 48 is intended in use to be lower than the Borrero top lid 32.

Applicants therefore respectfully submit that claim 24 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles.

O. Claim 22 is patentable under 35 USC 103(a) over Borrero in view of Peebles and further in view of Yamada.

As noted above, neither Peebles nor Yamada corrects the deficiencies noted above in Borrero. Moreover, Peebles fails to overcome the deficiencies in the Borrero/Yamada combination noted above, and Yamada fails to overcome the deficiencies noted above in the Borrero/Peebles combination. Accordingly, claim 22 is patentable under 35 U.S.C. 103(a) over Borrero in view of Peebles and further in view of Yamada for these reasons.

Moreover, Borrero and Yamada fail to provide any motivation to substitute Yamada's slidable lid for Borrero's pivoting lid 46. The motivation asserted by the Final Action is "for the purpose of covering and uncovering the tissue dispensing opening." However, Borrero's pivoting lid 46 already satisfies the alleged motivation of covering and uncovering the tissue dispensing opening." Therefore, the only motivation is Applicants' disclosure.

Applicants therefore respectfully submit that claim 22 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles and further in view of Yamada for this additional reason.

P. Claim 25 is patentable under 35 USC 103(a) over Borrero in view of Peebles and further in view of Pehr.

As noted above, neither Peebles nor Pehr corrects the deficiencies noted above in Borrero. Moreover, Peebles fails to overcome the deficiencies in the Borrero/Pehr combination noted above, and Pehr fails to overcome the deficiencies in the Borrero/Peebles combination noted above. Applicants therefore respectfully submit that claim 25 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles and further in view of Pehr.

Q. Claim 26 is patentable under 35 USC 103(a) over Borrero in view of Peebles and Pehr and further in view of Amundson et al.

As noted above, neither Peebles nor Pehr nor Amundson et al corrects the deficiencies noted above in Borrero. Moreover, neither Peebles nor Amundson et al overcomes the deficiencies in the Borrero/Pehr combination noted above. Neither Amundson et al nor Pehr overcomes the deficiencies in the Borrero/Peebles combination noted above. Neither Peebles nor Pehr overcomes the deficiencies in the Borrero/Amundson et al combination noted above. Applicants therefore respectfully submit that claim 26, as presented herein, is patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles and Pehr and further in view of Amundson et al for at least this first reason.

Moreover, Borrero, Peebles, Pehr and Amundson et al fail to provide any motivation to substitute Amundson et al's translucent elastic material for Pehr's elastic material. The offered motivation of providing an indication of the quantity of wipes

remaining in the package is superfluous in view of the explanation provided on page 7, lines 12 - 14 of the Final Office Action. There the Final Office Action already contends that Borrero's viewing window (32 and 34) allows the user to ascertain the contents of the body 10 without opening the lid. Thus, the only motivation to substitute Amundson et al's translucent elastic material for Pehr's elastic material is Applicants' disclosure. Applicants therefore respectfully submit that claim 26 is patentable under 35 U.S.C. § 103(a) over Borrero in view of Peebles and Pehr and further in view of Amundson et al for this additional reason.

R. Claim 31 is patentable under 35 USC 103(a) over Peebles in view of Borrero.

Claim 31 depends on claim 20, and Peebles fails to correct the deficiencies noted above in Borrero as regards the rejection of claim 20. Applicants therefore respectfully submit that claim 31, as presented herein, is patentable under 35 U.S.C. § 103(a) over Peebles in view of Borrero.

8. CLAIMS APPENDIX:

1. (Previously presented) A portable carrying case for personal care absorbent articles, comprising:

a body, said body defining an internal enclosure for receipt of a plurality of stacked personal care absorbent articles, said body configured with an exterior surface that is ergonomically shaped to generally conform to being carried and held in one hand of the user while the user's other hand removes an article from the internal enclosure;

an opening defined in said body at a location so as to at least partially expose an upper one of said absorbent articles for dispensing without generally exposing underlying absorbent articles;

a lid movably disposed relative to said body from a closed position wherein said opening is covered by said lid to an open position wherein access is provided to said absorbent articles through said opening; and

a manual push structure defined in said body generally opposite from said opening, said push structure configured to allow a user to push on the bottommost one of said stacked absorbent articles so as to move the uppermost one of said stack of absorbent articles towards said opening for grasping and retrieval by the user.

2. (Previously presented) The absorbent article carrying case as in claim 1, wherein said body comprises a multi-sided structure including a first wall and a second wall disposed opposite said first wall, said opening defined in said first wall and said push structure defined in said second wall.

3. (Original) The absorbent article carrying case as in claim 2, wherein said multi-sided structure comprises a front wall, a back wall, and circumferential side walls so as to define an elongated box-like structure, said opening defined in said front wall and said push structure defined in said back wall.

4. (Previously presented) The absorbent article carrying case as in claim 3, wherein said circumferential side walls defined a closed perimeter of said enclosure in said open and closed positions of said lid such that said absorbent articles cannot be slid out of said body and are removed by the user by pulling on said uppermost article in a direction generally transverse to a plane of said opening.

5. (Original) The absorbent article carrying case as in claim 1, wherein said lid is pivotal relative to said body.

6. (Original) The absorbent article carrying case as in claim 1, wherein said lid is slidable relative to said body.

7. (Original) The absorbent article carrying case as in claim 1, wherein said body comprises a shape generally conforming to an outline of said absorbent articles carried therein.

8. (Original) The absorbent article carrying case as in claim 1, wherein said push structure comprises an access opening defined through a wall of said body, said access opening having a restricted size so as to prevent removal of said bottommost article through said access opening.

9. (Original) The absorbent article carrying case as in claim 8, wherein said access opening is covered by an elastic material.

10. (Original) The absorbent article carrying case as in claim 9, wherein said elastic material is translucent.

11. (Original) The absorbent article carrying case as in claim 1, wherein said push structure comprises a resilient portion of a wall of said body generally opposite from said opening.

12. (Original) The absorbent article carrying case as in claim 1, wherein said body further comprises a viewing window such for a user to ascertain the contents of said body without opening said lid.

13. (Previously presented) The absorbent article carrying case as in claim 12, wherein said viewing window is incorporated with said push structure.

14. (Original) The absorbent article carrying case as in claim 1, further comprising a biasing structure configured with said body to bias said stacked absorbent articles generally away from said opening and towards said push structure.

15. (Original) The absorbent article carrying case as in claim 14, wherein said biasing structure comprises a detent formed in a front wall of said body and said push structure is defined in a back wall of said structure.

16. (Original) The absorbent article carrying case as in claim 1, wherein said lid defines at least a portion of a front wall of said body in said closed position such that said opening is defined in said front wall upon said lid being moved to said open position.

17. (Original) The absorbent article carrying case as in claim 1, further comprising a stack of said personal care absorbent articles carried in said body.

18. (Original) The absorbent article carrying case as in claim 17, wherein said personal care absorbent articles comprise one of sanitary napkins, pantliners, tampons, and interlabial devices.

19. (Canceled).

20. (Previously presented) A portable carrying case for personal care absorbent articles, comprising:

an elongated body having a front wall, back wall, and side walls, said body defining an internal enclosure within said walls, said body configured with an exterior surface that is ergonomically shaped to generally conform to being carried and held in one hand of the user while the user's other hand removes an article from the internal enclosure;

a stack of personal care absorbent articles carried in said enclosure;

an opening defined in at least a portion of said front wall body at a location so as to expose an upper one of said absorbent articles for dispensing through said opening without generally exposing underlying absorbent articles;

said side walls defining a closed perimeter around said opening such that said absorbent articles are prevented from being slid out of said enclosure;

a lid movably disposed relative to said body from a closed position wherein said opening is covered by said lid to an open position wherein access is provided to said absorbent articles through said opening;

a manual push structure defined in said back wall and configured to allow a user to push on the bottommost one of said stacked absorbent articles so as to move the uppermost one of said stack of absorbent articles towards said opening for grasping and retrieval by the user in a direction generally transverse to a plane of said front wall; and

a biasing structure configured with said body and disposed to bias said stack of absorbent articles towards said back wall.

21. (Original) The absorbent article carrying case as in claim 20, wherein said lid is pivotal relative to said body.

22. (Original) The absorbent article carrying case as in claim 20, wherein said lid is slidable relative to said body.

23. (Original) The absorbent article carrying case as in claim 20, wherein said body comprises a shape generally conforming to an outline of said absorbent articles carried therein.

24. (Original) The absorbent article carrying case as in claim 20, wherein said push structure comprises an access opening defined through said back wall, said access opening having a restricted size so as to prevent removal of said bottommost article through said access opening.

25. (Original) The absorbent article carrying case as in claim 24, wherein said access opening is covered by an elastic material.

26. (Original) The absorbent article carrying case as in claim 25, wherein said elastic material is translucent.

27. (Original) The absorbent article carrying case as in claim 20, wherein said push structure comprises a resilient portion of said back wall generally opposite from said opening.

28. (Original) The absorbent article carrying case as in claim 20, wherein said body further comprises a viewing window such for a user to ascertain the contents of said body without opening said lid.

29. (Original) The absorbent article carrying case as in claim 28, wherein said viewing window is incorporated with said push structure.

30. (Original) The absorbent article carrying case as in claim 20, wherein said biasing structure comprises a detent formed in said front wall of said body.

31. (Original) The absorbent article carrying case as in claim 30, wherein said lid defines at least a portion of a front wall of said body in said closed position such that said opening is defined in said front wall upon said lid being moved to said open position, said detent formed in said lid.

32. (Original) The absorbent article carrying case as in claim 31, wherein said personal care absorbent articles comprise one of sanitary napkins, pantliners, tampons, and interlabial devices.

9. Evidence Appendix:

The dictionary definition of "ergonomically" was made of record without opposition or challenge at page 10, lines 1-2 of applicants' Response to Final Rejection mailed on January 16, 2007.

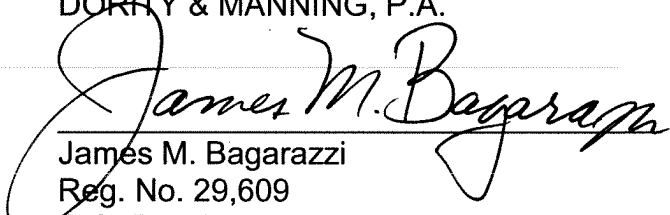
10. Related Proceedings Appendix:

N/A

Respectfully submitted,

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